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MT LEGISLATIVE HISTORY

Chapter 301 1989

Bill (H) 248 S _____ Original bill & hist. ___C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Feb 01	✓ C	Hearing Date(s) Mar 08	✓ C
_____	___C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Feb 01	✓ C	Mar 08	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Form CS-32
Rev. 1985

STATUS SHEET

51 LEGISLATIVE SESSION

JUDICIARY COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB 201	1-17	1-27	1-27	1-27							
HB 248	1-18	2-1	2-1	2-1							
HB 260	1-18	1-26	1-26			1-26					
HB 264	1-18	2-1	2-6			2-6					
HB 265	1-18	1-27	1-30			1-30					
HB 286	1-19	1-31	1-31			1-31					
HB 291	1-19	2-2	2-17			2-17					
HB 292	1-19	2-2	2-2	2-2							
HB 295	1-20	2-1	2-9			2-9					
HB 310	1-20	2-13	2-13			2-13					
HB 312	1-20	1-31	1-31	1-31							
HB 313	1-20	2-6	2-9			2-9					
HB 316	1-23	2-8	TABLED	ON 2-9							
HB 330	1-23	2-9	TABLED	ON 2-9							

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on February 1, 1989, at 8:05 a.m.

ROLL CALL

Members Present: All

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 248

Presentation and Opening Statement by Sponsor:

Rep. Mary McDonough stated that in the 1987 Legislature the public retirement benefits were made exempt from bankruptcy proceedings. This bill would make private retirement benefits exempt from bankruptcy proceedings. Rep. McDonough commented that her main proponent was unable to attend the hearing; therefore, Sen. Mazurek was available for questioning and to help clarify the bill.

Testifying Proponents and Who They Represent:

Senator Joe Mazurek, Senate District 23

Proponent Testimony:

Sen. Mazurek commented that in the past, public retirements have been exempt from execution and have been exempt in bankruptcy proceedings. When the exemptions were redone by the committee, chaired by Rep. Mercer and Sen. Halligan, they extended the exemptions to private pensions as well as public employee retirement to give the same benefits to people who retired having worked in the private sector. On December 27, Judge Peterson said that it wasn't clear to him that we had intended to exempt all private pensions including IRA's from execution and from bankruptcy proceedings.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Boharski questioned if someone can have stocks and bonds and say that it is for retirement? Sen. Mazurek stated yes and no. An individual retirement account - yes. Stocks and bonds - no. He stated that it has to be a pension or annuity benefit as that is what the language of the bill says.

Rep. Addy commented that Section 2 of the bill does not talk about pensions or retirement benefits. It talks about earnings of a judgement debtor. What is the reason for changing that language? Sen. Mazurek stated that it also deals with a repealer. Both the repealer and Section 2 are just corrections of what was done in 1987. He commented that he was not a part of the drafting of the bill, but it was to his understanding that those two changes are to clarify that when we are dealing with the wages of a judgement debtor, we have merely conformed our statute to the federal law and to the changes in which were made in 1987.

Closing by Sponsor: Rep. McDonough closed and submitted documentation from Warren C. Wenz in favor of HB 248 (EXHIBITS 1 and 2).

DISPOSITION OF HOUSE BILL 248

Motion: A motion was made by Rep. McDonough to DO PASS, motion seconded by Rep. Wyatt.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the DO PASS motion and CARRIED unanimously.

HEARING ON HOUSE BILL 206

Presentation and Opening Statement by Sponsor:

Rep. Gould stated that this is a very simple bill and one he hoped the Committee would approve of. On that note, he commented that he would like to let the proponents of the bill speak and that there is a need for one amendment.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 1, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

EXHIBIT 1
DATE 2-1-89
HB 248

MARRA, WENZ, JOHNSON & HOPKINS, P.C.
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N L. SPOON
HOMAS A. MARRA
OBERT G. DRUMMOND

TELEPHONE 454-1384
AREA CODE 406

January 9, 1989

Take up w/ Sen. Judiciary

Joseph P. Mazurek
Box 77
Capitol Station
Helena, MT 59620

Dear Joe:

You may not recall, but during the last Legislative Session, you and I visited about legislation pending at that time designed to exempt all retirement plans (both public and private) from execution. The exemption would also set aside all retirement plans from the claims of creditors during bankruptcy proceedings.

Unfortunately, Judge Peterson on December 22, 1988, held in substance that although public plans are exempt, private plans are not. The order was entered in Case No. 88-40667 entitled "In Re: Bell and Bell, Debtors". A copy of the order is enclosed for your convenience.

Although the order only addresses Individual Retirement Accounts, the effect of the order would clearly reach all other private plans.

I would hope that this Legislature would again take up the matter and see to it that all private plans are clearly exempt. There would appear to me to be no legitimate policy reasons for distinguishing between public and private plans. Further, it would seem that a serious constitutional question regarding equal protection is also raised if the distinction is not erased.

Thank you for your time and attention to this matter as I know you are very busy.

Very truly yours,

MARRA, WENZ, JOHNSON & HOPKINS, P.C.

Warren C. Wenz

WCWD/bb
Enc.

HB 248

FILED

DEC 27 1988

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re

MARVIN REX BELL and
YVONNE CHRISTINE BELL,

Case No. 88-40667

Debtors.

ORDER

DEC 27 RECD

At Butte in said District this 22nd day of December, 1988.

In this Chapter 13 case, a confirmation hearing was held November 22, 1988, together with the Trustee's objections to the Debtors' Plan and claimed exemptions. The Debtors were present and represented by Barbara E. Bell and the Trustee was present. At the close of trial, the Court took the matters under advisement. Counsel for the Debtors has filed a brief in support of the Debtors' Chapter 13 Plan and claimed exemptions and this matter is deemed submitted.

The Trustee objects to the Debtors' claim of exemption to an Individual Retirement Account (IRA) and to the feasibility of the Debtors' Chapter 13 Plan based on the Debtors' schedules and statements. The Debtors' Plan proposes to pay the Trustee $220.00 per month. However, the Debtors' Amendments to their Petition, filed November 3, 1988, show that the Debtors only have $200.00 available to make Plan payments. The Amendments to the Petition further states that the Debtors have IRA accounts with a balance of $9,677.00. The Debtors assert that the IRA accounts are exempt

under § 25-13-609, M.C.A., while the Trustee objects and asserts that the IRA accounts are not exempt and, therefore, must be considered to determine whether the unsecured creditors would receive more upon liquidation than under the Plan. 11 U.S.C 1325(a)(4).

Montana has "opted out" of the Federal exemptions which are available to bankruptcy debtors. § 31-1-106, M.C.A. Section 31-2-106, M.C.A., sets forth the exemptions that are available to Montana debtors:

> "Exempt property -- bankruptcy proceeding. No individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d) except that property specified in 11 U.S.C. 522(d)(10) and that property exempt from execution of judgment as provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612, 19-13-1004, Title 25, chapter 13, part 6, 33-7-511, 33-15-512 through 33-15-514, 33-10-502, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245."

Section 31-2-106, M.C.A., was overhauled by the 1987 Legislature to include, as exempt, numerous public retirement, pension, and annuity funds. However, no private pensions, such as Keoghs or IRAs are specifically listed in the enumerated Montana statutes. The Debtors' claimed exemption under § 25-13-609, M.C.A., is completely misplaced. None of the items contained in § 25-13-609, M.C.A. are even remotely applicable to an IRA. Therefore, the Debtors' claimed exemption under § 25-13-609, M.C.A. is not allowable. However, this Court will determine whether the IRA is exempt under § 522(d)(10) of the Bankruptcy Code, which is a

Federal exemption specifically allowed Montana Debtors.

Section 522(d)(10)(E) provides:

"(10) The debtor's right to receive --

(E) a payment under a . . . annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for support of the debtor and any dependent of the debtor, unless --
(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's right under such plan or contract arose;
(ii) such payment is on account of age or length of service; and
(iii) such plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 [26 U.S.C. 401(a)], 403(a), 403(b), 408, or 409)."

An IRA account qualifies under 26 U.S.C. 408, and, therefore, the three exceptions enumerated in 522(d)(10)(E) are not applicable. Neither the Ninth Circuit Court of appeals or the Ninth Circuit Bankruptcy Appellate Panel has directly addressed whether an IRA is exempt under § 522(d)(10)(E). In In re Daniel, 771 F.2d 1352 (9th Cir. 1985), the Court held that the Debtor had to adhere strictly to the California statute exempting a private profit-sharing retirement plan. The Court stressed that the explicit language of the statute relied upon must be used. Id. at 1356. Numerous other courts have held that IRAs or such accounts are not exempt under § 522(d)(10)(E) or applicable state statutes. See, In re Clark, 711 F.2d 21 (3rd Cir. 1983), (held that Keogh plan was

not exempt because payments were not presently "reasonably necessary" for support of debtor or dependents); Matter of Kochell, 26 B.R. 86 (Bankr. W.D. Wis. 1982), (held that only present payment on pension plans are exempt, not the plans themselves); Matter of Parker, 473 F.Supp. 746 (1979), (held that IRAs are under too much control of debtor and are not exempt); In re Mace, 4 B.C.D. 94 (Bankr. Or. 1978), (held that IRA's are not exempt unless reasonably necessary upon filing and confirmation and stated that debtor has too much control over the account to justify exemption). Subsequent to Mace, the Oregon Bankruptcy Court's denial of a Debtor's claimed exemption in a Keogh account was appealed to the Ninth Circuit Court of Appeals. In Herbert v. Fliegel, 813 F.2d 999 (9th Cir. 1987), the Court stated:

> "The majority of courts that have addressed the policy issues have concluded that the benefits to be derived from granting an exemption for self-funded plans are outweighed by the 'strong public policy that will prevent any person from placing his property in what amounts to be revocable trust for his own benefit which would be exempt from the claims of his creditors.'" Id. at 1001.

The Court then denied the Debtor's claimed exemption in a Keogh plan and affirmed the Bankruptcy Court's decision. The Oregon Bankrupty Court subsequently held in In re Masters, 73 B.R. 796 (Bankr. D. Or. 1987), that a fund set aside by the debtor in a Retirement Savings Plan, supplied by the debtor's employer, was not exempt under the rationale of Mace and Herbert v. Fliegel. Id. at 797-800. The majority of the Courts denying an IRA type exemption

base their holdings on whether the funds are reasonably necessary, under the control of the debtor, or are presently being paid out to the debtor. Accordingly, this Court finds that an IRA is exempt under 522(d)(10)(E) if it is shown to be "reasonably necessary" for the support of the debtor and any dependent of the debtor.

This Court in In re Hunsucker, ___ B.R. ___, 6 Mont. B.R. 217, 220 (Bankr. Mont. 1988), adopted the definition of "reasonably necessary" as set forth in Warren v. Taff, 10 B.R. 101, 107 (Bankr. Conn. 1981):

> "[T]he reasonably necessary standard requires that the court take into account other income and exempt property of the debtor, present and anticipated . . . and that the appropriate amount to be set aside for the debtor ought to be sufficient to sustain basic needs, not related to his former status in society or the lifestyle to which he is accustomed but taking into account the special needs that a retired and elderly debtor may claim." Hunsucker, at 220.

In Hunsucker, this Court found that a teacher's pension was reasonably necessary for the support of the debtor and the pension was found to be exempt. In this case, no evidence was introduced to the Court that the IRA is reasonably necessary for the support of the Debtors or any dependent of the Debtors. In fact, the evidence shows the opposite. Mr. Bell is a 45 year old retired U. S. Army veteran who is unemployed and receives a pension from the U. S. government. Mrs. Bell is a secretary at the Montana Deaconess Medical Center. The Debtors' amendments to their petition show that they have a monthly take home of $1,840.00,

together with monthly expenses of $1,640.00. Accordingly, the Debtors currently have $200.00 per month above their expenses to fund the Chapter 13 Plan. Therefore, the Debtors have not sustained their burden of proof that the funds from the IRA are reasonably necessary for their support.

Due to the factual circumstances of this case, the Court will not address whether a debtor needs to be currently receiving payment under the IRA to allow the exemption under § 522(d)(10)(E).

IT IS ORDERED that the objections of the Trustee to the Debtors' claim of exemption in the IRA account is sustained and the Debtors' Chapter 13 Plan is denied confirmation with leave to amend, convert, or dismiss this case within ten (10) days.

JOHN L. PETERSON
United States Bankruptcy Judge
215 Federal Building
Butte, Montana 59701

Copy mailed to Counsel of
Record and Trustee this
2nd day of December, 1988.

DATE 2-1-89
HB 248

FILED

JAN 12 1989

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re

EARL MUTCHLER, JR.
BONNIE R. MUTCHLER
d/b/a Mutchler Farms,

Case No. 87-20369

Debtors.

ORDER

At Butte in said District this 12th day of January, 1989.

After conversion of their Chapter 12 case to Chapter 7 on September 8, 1988, the Debtors filed an Amended Statement of Exempt Property to which objections have been filed by the Trustee and Western Montana Production Credit Association (PCA). The Debtors list as exempt property the following:

1. Earnings. The Debtors claim earnings in the form of proceeds received from their potato crop and the 1988 crop are exempt under Section 25-13-614, M.C.A., up to 75% of the crop proceeds.

2. Property Necessary to Carry Out Government Function. One Debtor claims exempt a Winchester Model 70-3006 rifle and the other Debtor claims exempt a 357 Blackhawk revolver under Section 25-13-613(1)(b), M.C.A.

3. Motor Vehicles. Under Section 25-13-609(2), M.C.A., one Debtor claims exempt a 1974 Dodge pickup valued at $1,200.00 and the other Debtor claims a $1,200.00 exemption in a 1971 International Truck valued

at $2,500.00.

4. Household Goods and Other Items. The Debtors claim exempt under Section 25-13-609, M.C.A., 44 separate items to which the Trustee and PCA object to the items of two metal detectors, two freezers, office equipment, desk, file cabinet, office chair and calculator, 1970 17' boat, 1974 boat trailer, T81 Yamaha snowmobile, 1977 Kawasaki motorcycle, miscellaneous yard and garden tools. Objection is also made to the exemption claim of Earl Mutchler under § 25-13-609(1) of a drill press, vice, arc welder, wire welder and hand grinder.

5. Tools of the Trade. Debtors claim exempt under Section 25-13-609(3)(a) and (c), over objection by the Trustee and PCA, a spudnick (potato loader), Massey Harris 65 Tractor, 1978 Ford offset disk, cultipacker, 1976 Melrose drill, Allis Chalmers Tractor with loader, Allis Chalmers Combine, and 1974 Case 1070 Tractor.

Hearing on the objections was held on December 1, 1988, and memorandums have now been filed by the parties in support of their respective positions.

Debtors filed this case under Chapter 12 on June 8, 1987, and after several attempt to put together a Plan, conceded that such could not be accomplished and therefore converted the case to Chapter 7. Following conversion, Debtors consented to relief from the automatic stay requests by Federal Land Bank and PCA on the real property and then amended their schedules to include the

present claims of exemptions. The Debtors will thus lose the farm by foreclosure.

The Debtors contend that while the case was pending under Chapter 12, the Debtors planted a 1987 potato seed crop, in which the Court, by previous Order of March 17, 1988, determined PCA has a valid security interest to the extent of $3,500.00. Further, during the course of administration, Debtors were authorized to borrow funds from the Ronan State Bank to purchase the spudnick, which loan has now been repaid, so that such item is free and clear of liens. The source of repayment was the 1987 potato seed crop which was not subject to the PCA lien. Accordingly, Debtors claim three types of assets as exempt, namely, the balance of the funds in the 1987 potato seed crop in the amount of $4,848.00; the 1988 potato seed crop in the amount of $40,000.00 net; and the household goods, motor vehicles and tools of the trade. The 1988 crop was planted post-petition, but will not be marketed until the spring of 1989. The Debtor testified the crop was grown and harvested solely because of his labor and expertise.

Since this case was commenced under Chapter 12 on June 8, 1987, and converted to Chapter 7 on September 8, 1988, the application of Section 348(a) of the Codes to the claim of exemption is an issue. It is important to keep in mind that a Chapter 12 Plan was not confirmed. Section 348(a) provides:

> "(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but,

> except as provided in subsection (b) and (c) of this section, does not affect a change in the date of the filing of the petition, the commencement of the case, or the order of relief."

Except for certain exceptions dealing with claims, executory contracts, and Order of Relief date, Section 348(a) specifies that the date of the filing of the original Chapter 12 petition is unaffected by conversion to Chapter 7. Moreover, as to payments made to the Trustee while the case is pending in Chapter 12, under § 1226, if the Plan is not confirmed, the payments are to be returned to the Debtor after deducting Trustee fees and expenses. We are not faced, in this case, with application of Plan payments, as was the situation in Chapter 13 cases such as In re Kao, 52 B.R. 452 (Bankr. Or. 1985) (a confirmed Chapter 13 Plan), and In re Swift, 81 B.R. 621 (Bankr. W.D. Wash 1987) (an unconfirmed Chapter 13 Plan). Swift holds:

> "Upon the conversion of a Chapter 13 case, in which a plan has not been confirmed, to a case under chapter 7, the date for determining property of the estate is the date of the filing of the Chapter 13 petition." Id. at 623.

Swift, however, lays great emphasis on Section 541(a)(6), which excepts from the estate earnings from personal services rendered after filing of the petition. Swift does not discuss § 1306(a), which specifically states that after acquired property including earnings is property of the estate. Swift, however, correctly construes § 1327, which states when a Plan is not confirmed, payments made to the Trustee are to be returned to the debtor, less

Trustee's fees and costs. In sum, the conclusion in Swift as to property of the estate, other than Plan payments, is subject to challenge for the reasons set forth in In re Kao, supra. Kao, relying on In re Winchester, 46 B.R. 492 (9th Cir. BAP 1984), which dealt with exemptions and property of the estate issues, holds:

> "Since § 541 is not mentioned in any of the subsections of § 348, it would, at first appear that the term 'commencement of the case' as used in § 541 would be controlled by subsection (a) of § 348 and would therefore be the date upon which the petition for relief was filed rather than the date of conversion. However in chapter 13 after-acquired property is also property of the estate. 11 U.S.C. § 1306(a). As is stated by the BAP in Winchester:
>
> > Therefore, it is only logical that property of the Chapter 7 estate in a converted Chapter 13 case should be determined on the date of conversion. Otherwise, the after-acquired property could not be included in the Chapter 7 estate. Once the property is revested in the debtor after confirmation, he can do anything with it so long as it is not subject to a lien provided for in the plan or order of confirmation. 11 U.S.C. §§ 1327(b) and (c). Thus, during the course of a plan, which can last as long as five years, a debtor may sell, abandon, consume, or trade-in most of his assets. Combining this with the possibility of after-acquired property means that by the time of conversion the estate may have been changed completely in character and amount. This reasoning is consistent with § 348(d) which allows the debtor to discharge claims arising during the pendency of the Chapter 13 but before conversion. It is

> only reasonable that the debtor be required to place after-acquired property into Chapter 7 estate if he is going to be relieved from liability of post-petition claims. Often it is the post-petition indebtedness which was used to acquire the after-acquired property.
>
> Also see Armstrong v. Lindberg, 735 F.2d 1087, 12 BCD 81 (8th Cir. 1984)." Id., at 453-454.

Kao dealt with refund of Plan payments, not the date which governs exemptions. Winchester is directly in point on the exemption issue. Even though the above cases are Chapter 13 decisions, because of the similar language between Sections 1306 and 1207 (property of the estate), Chapter 13 case precedents provide a valuable tool for interpretation of Chapter 12 provisions. In re Janssen Charolais Ranch, Inc. (Janssen I), 73 B.R. 125 (Bankr. Mont. 1987). In the treatise ANDERSON-MORRIS, CHAPTER 12 FARM REORGANIZATIONS (1987), Conversions & Dismissals, § 3.09, the authors write at pp. 3-41 -3-45:

> "Conversion of a Chapter 12 case to a case under Chapter 7 could create problems relating to the exemptions available to the debtor in a subsequent Chapter 7 case, whether certain property obtained after commencement of the Chapter 12 case remains as property of the Chapter 7 estate, and what the appropriate distribution should be of funds in possession of the Chapter 12 trustee at the time of conversion of the case.
>
> * * *
>
> The source of the problem is the definition of property of the estate for Chapter 12 and 13 purposes. In proceedings under each of these chapters, property of the

estate includes the debtor's postpetition earnings. Chapters 7 and 11, however, do not include those earnings as property of the estate. Consequently, the problem facing the courts is to determine the proper treatment for postpetition earnings of Chapter 12 and 13 debtors upon conversion to cases under chapters in which those assets would not be property of the estate. Some courts have held that this postpetition property should receive the same treatment as postpetition claims against a debtor, and both the assets and liabilities would be transferred to the new case after conversion. * * * Other courts, however, have focused more directly on § 348 of the Code and have held that these postpetition earnings would not be property in the subsequent Chapter 7 case. Those courts have held that conversion of a case operates so as to render the initial filing date of the Chapter 13 case the filing date for the converted Chapter 7 proceeding. * * * The result is that funds representing those earnings in the possession of a trustee would be returned to the debtor upon conversion of the case. The courts certainly have not reached a consensus on this matter. Moreover, there does not appear to be any way to reconcile the opposing decisions reached thus far.

* * *

A second issue that arises in the conversion of a case is the proper treatment to be given to a debtor's claim of exemptions. The problem can arise in two ways. First, there could be changes in the applicable exemption law between the time of the initial commencement of the Chapter 12 case and the date of conversion to Chapter 7. In that instance, the question arises of which exemption law applies to the debtor's claim in the Chapter 7 case. Although the statutory argument employed by those courts that have found that postpetition earnings are not property of Chapter 7 estates created after the conversion of a prior Chapter 13 case is again available, the courts largely have adopted

> the date of the conversion of the case as the proper date to determine exemptions. [Citing In re Lindberg, and Winchester, supra.]
>
> A reason for choosing the conversion date also relates to the property being claimed as exempt. That is, over the course of a Chapter 12 proceeding, the debtor may acquire additional property and use other property which might have been claimed as exempt in initial filings. For example, a debtor may claim a tractor as exempt in the initial filing of schedules in the Chapter 12 case. The property need not be set aside as exempt because the debtor will retain possession of that property upon confirmation of the case. Over the course of the Chapter 12 proceedings, however, the value of the tractor may be reduced significantly by normal wear and tear. When the debtor subsequently attempts to convert the Chapter 12 case to a Chapter 7 case, the debtor may seek to claim different property as exempt in order to take better advantage of applicable exemption provisions."

In the present case, the Montana state law regarding exemptions has been changed between the date the petition was filed and the date of conversion of the case, Sec. 1, Chap. 20, Laws of Montana, 1987 (effective October 1, 1987), and the Debtors acquired from proceeds of the estate a new implement to conduct their potato seed operation. Thus, the proper date to select to determine property of the estate and exemptions is critical.

I am persuaded that the reasoning of In re Winchester is proper, not only for policy reasons, but also because of Chapter 12 Code provisions. Section 1207 defines property of the estate as:

> "(a) Property of the estate includes, in

addition to the property specified in Section 541 of this title --

(1) All property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed or converted to a case under Chapter 7 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under Chapter 7 of this title, whichever occurs first."

Section 541(a)(6) and (7) provides that property of the estate includes:

"(6) Proceeds, products, offspring, rents and or profits of or from property of the estate, except such earnings from services performed by an individual after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case."

Needless to say, the earnings exception in § 541(a)(6) seems to be in conflict with the specific language of § 1207(a)(2). While § 541 is a part of a general chapter applicable under § 103(a) to a case under Chapter 12, under § 103(i), Chapter 12 of Title 11 applies only in a case under such chapter, so that the specific treatment of earnings under § 1207(a)(2) governs, rather than the exception in 541(a)(6). That exception applies only to Chapter 7 and 11 cases.

As a result, as of the date of conversion of this case to Chapter 7 from Chapter 12, property of the estate which passes by law to the Trustee includes the 1987 crop proceeds, 1988 crop and all equipment, household goods, tools of trade in existence at the date of the original filing and acquired post-petition during the administration of the Chapter 12 case. Likewise, the Debtors' exemptions in such property are to be governed as of the date of conversion to Chapter 7, because that is the date when the Chapter 7 case commenced. As noted in In re Lindberg, supra, at 1090-1091:

> "The bankruptcy courts are in general agreement that in a case converted from Chapter 13 to Chapter 7, the property of the estate consists of all property in which the debtor has an interest on the date of conversion. See, In re Tracy, 28 B.R. 189 (Bankr. D. Me. 1983); In re Stinson, 27 B.R. 18 (Bankr. D. Or. 1982); In re Richardson, 20 B.R. 490 (Bankr. W.D. N.Y. 1982). We believe that the same date must control in determining what exemptions the debtor may claim from the estate. Only if the same date controls what is property of the estate and what exemptions may be claimed can the debtor make full use of exemption laws.
>
> * * *
>
> We find further support for our conclusion that the date of conversion controls what exemptions may be claimed in one of the new bankruptcy rules, Rule 1019(1). The Advisory Note to Rule 1019(1) explains that when the debtor in a converted case has not previously prepared a schedule of assets, he must do so as if a Chapter 7 petition had been filed on the date of conversion. (Emphasis in original). Since debtors must claim exemptions in the schedule of assets (Bankruptcy

> Rule 4003(a)), Rule 1019(1) strongly suggest that the date of conversion controls what exemptions may be claimed in a converted case."

By General Order 86-2 of this Court (November 26, 1986), the Rules of Bankruptcy Procedure apply to all cases filed pursuant to Chapter 12 of Title 11, except where compliance would be contrary to the Bankruptcy Laws. Therefore, Rule 1019 is applicable to Chapter 12 as it is to Chapter 13 cases.

Having thus concluded that the date of conversion applies to test the validity of the exemptions of the Debtors against assets of the estate, we must look to Montana state law to determine what exemptions of property of the estate are afforded to Debtors since Montana has opted out of the federal exemptions. Sec. 31-2-106, M.C.A., (1987).

Earnings. The Debtors claim as exempt the balance of proceeds of the 1987 potato seed crop in the sum of $4,848.00, which sum was on hand on the date of conversion. The issue is whether the proceeds from the sale of the crop constitutes earnings of the Debtor. The Debtor has filed an affidavit with the Court claiming such proceeds which satisfies the requirements of § 25-13-411, M.C.A. Under 25-13-614, M.C.A., earnings are exempt as follows:

> "(2) Except as provided in Subsection (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:
>
> (a) The amount by which the disposable earnings for the week exceed

> 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or
>
> (b) 25% of his disposable earnings for that week.
>
> * * *
>
> (5) For the purpose of this section, the definition of earnings, disposable earnings and garnishment are set forth in 15 U.S.C. 1672."

Under 15 U.S.C. 1672(a), the term earnings means compensation paid or payable for personal services, whether denominated wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program. The Debtor testified that the net proceeds from the crop were derived solely from his labor and expertise as a farmer, and he needs such funds for living expenses. Thus, he claims 75% of the $4,848.00. I hold the proceeds from the 1987 crop, now reduced to cash, are exempt up to 75% since they constitute earnings for personal labor by the Debtor. I note that the definition of earnings under 15 U.S.C. 1672 is broad, and since we are dealing with an exemption statute, the exemption should be liberally construed in favor of the Debtors. MacDonald, Trustee v. Mercill, 714 P.2d 132 (Mont. 1986). Further, I am aided in this conclusion by the definition of earnings in § 40-5-201(6), M.C.A., which defines earnings as:

> "Compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments under pension or retirement programs or insurance policies of any type. 'Earnings' specifically includes all gain

> derived from capital, labor or both combined, including profit gained through sale or conversion of capital assets."

Clearly, the definition of earnings is much broader than the Code definition of wages as defined in § 39-3-201(5), M.C.A., which states wages includes any money due an employee from an employer. Money derived from personal labor by a farmer or self-employed person are the fruit of his labor and are earnings within the Montana exemption statute. The proof of the Debtor regarding his personal labor to grow and harvest the crop so it could be reduced to cash is undisputed, and consequently the Debtor is entitled to an exemption of $3,636.00 in the cash proceeds, with the balance payable to the Trustee. I am assuming for the purposes of this computation that the PCA lien of $3,500.00 has been paid to the Trustee for the benefit of PCA. If not, such sum is to be paid to PCA and then the balance remitted to the Debtors and Trustee.

As to the 1988 crop presently harvested but not yet sold, the labor of the Debtor has been expended on such crop but the crop has not been reduced to cash. The crop, if sold in the spring of 1989, is expected to net $40,000.00, and is now in storage. Under the above definition of earnings, compensation paid or payable for personal services constitutes an exempt item. The Debtor testified that about 75% of the required labor to sell the crop has been performed by him, and marketing the crop is all that is left to be accomplished. However, on the date of conversion of the case to Chapter 7, the crop had not been liquidated, but rather remains in

existence as crop in storage. Under these facts, the crop is exempt not as earnings but rather as personal property under § 25-13-609(1), M.C.A., which provides:

> "(1) A judgment debtor is entitled to exemption of the following:
>
> (1) the judgment debtor's interest, not to exceed $4,500.00 in aggregate value, to the extent of a value not exceeding $600 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops and musical instruments;"

Personal property claimed exempt under 25-13-609(1). Debtor Bonnie Mutchler claims as exempt 44 separate items of personal property. Included in the list of exemptions to which objection is raised is a 1970 17' Silverline boat valued at $600.00, 1974 Ezlo boat trailer valued at $150.00, T81 Yamaha snowmobile valued at $800.00, 1977 Kawasaki motorcycle valued at $75.00, desk, file cabinet, office chair and calculator valued at $65.00, potatoes valued at $520.00, two metal detectors valued at $50.00, and two freezers valued at $75.00. All of the items claimed total $4,500.00, so that aggregate amount under 25-13-609(1) is satisfied.

Neither the Trustee nor PCA have presented a plausible interpretation of Subsection (1) of 25-13-609. As that section is written the Debtors may claim as exempt any item of property up to the extent of $600.00, together with $600.00 in household furnishing and goods, $600.00 in appliances, $600.00 in jewelry,

$600.00 in wearing apparel, $600.00 in books, $600.00 in firearms and other sporting goods, $600.00 in animals, $600.00 in feed, $600.00 in crops and $600.00 in musical instruments, so long as the total exemption does not exceed the cap of $4,500.00. I am guided in this interpretation by the case of Matter of Smith, 640 F.2d 888 (7th Cir. 1981). Smith involved interpretation of the federal exemption statute § 522 of the new Bankruptcy Code. § 522(d) grants exemptions in a laundry list of items of real and personal property, up to certain aggregate amounts, i.e., the debtor's interest not to "exceed $200.00 in value in any particular item or $4,000.00 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments * * *". § 522(d)(5), before amendment in 1984, read:

> "(5) The debtor's aggregate interest, not to exceed in value $400 plus any unused amount of exemption provided under paragraph (1) of this subsection, in any property." Emphasis supplied.

The term "in any property" in § 522(d)(5) in virtually identical to the term "in any item of property" in § 25-13-609(1), M.C.A. The Circuit Court in Smith held:

> "The dispute here is caused by the words 'any property' in paragraph (5). The trustee contends that they refer only to other property that is specified in section 522: household goods, motor vehicles, etc. The debtors argue that they have the same broad meaning as in section 541: 'all legal or equitable interests of the debtor.' We agree with the debtors that Congress did not intend to distin-

> guish between section 522 property and section 541 property. We hold that the general exemption may be applied to any property that is property of the estate -- including, of course, causes of action arising under the federal Truth in Lending Act or similar state statutes."

The Court reasoned such interpretation was consistent not only with the "fresh start" provisions of the Bankruptcy Code but with the age-old doctrine that "exemption statutes are to be construed liberally". Id. at 891.

Thus, I conclude that under 25-63-609(1) any item of property may be exempt up to $600.00, provided the entire exemption for all items of property including those specifically enumerated does not exceed $4,500.00 in the aggregate. I believe this interpretation comports with legislative intent and clearly eliminates much controversy over what particular items may be claimed as exempt. Since each item of property claimed exempt by Bonnie Mutchler, except the 1970 Silverline boat and Yamaha motorcycle is less than $600.00, those items are properly exempt under § 25-13-609(1). As to the boat and motorcycle, those items will be turned over to the Trustee for sale, whereupon Bonnie Mutchler will be given a credit for $600.00 in each item as her exemption.

Likewise, as to Debtor Earl Mutchler, he seeks exemptions of items of property under § 25-23-609(1), which includes the item "Potatoes (after earnings exemption)" of $3,460.00. By the same reasoning stated above, since the exemption of each item is less

than $600 per item, except for the potato crop, such exemptions are allowed over objections by the Trustee. As to the 1988 potato crop exemption, such claim cannot exceed $600.00, so that upon sale of the crop by the Trustee, Earl Mutchler will be given credit for $600.00 from the proceeds of sale.

Section 25-13-609(a) to (c) exemption. Such statute allows as exempt property "the judgment debtor's interest, not to exceed $3,000.00 in value, in (a) any implements; (b) professional books; or (c) tools, of the trade of the judgment debtor or a dependent of the judgment debtor". In In re Caberera, 5 Mont. B.R. 353 (Bankr. Mont. 1988), I held that the word "or" contained in subsection (3) is meant to be used in the disjunctive, and as such the judgment debtor may exempt up to $3,000.00 in value of each item listed in 25-13-609(a), (b) or (c), thereby allowing a stacking of the exemptions. PCA requested the Court to reconsider such decision, and toward that end introduced testimony and opinion evidence from state Senator Mike Halligan, Chairman of the Subcommitee on Lien Laws, which committee was instrumental in redrafting the Montana exemption statutes in the 1987 legislative session. According to Senator Halligan, and minutes of the subcommittee, a $3,000.00 limitation was intended to apply to all tools of trade, professional books and implements in the aggregate. The minutes state the "recommendation for a $3,000.00 exemption was an effort to allow all persons a reasonable amount of tools, books, furniture, or equipment required in today's business or professional world in order to continue in their occupations". The

Court has now reviewed its prior opinion and concludes it correctly interpreted Section 25-13-609(a) to (c). As I noted in Caberera:

> "If the Montana legislature had intended the $3,000.00 amount of § 25-13-609(3) to be 'in aggregate' it certainly could have so stated. In subsection (1) of the same exemption section, 25-13-609, the legislature distinctly used the words 'in aggregate' to cap the amount a debtor may claim under that subsection. This court finds that the legislature's omission of the words 'in aggregate' in subsection (3) was intentional."

In addition to the discussion in Caberera, the following authorities support the Court's conclusions. The placing of the comma after tools in Subsection (c) in the enrolled bill is unimportant in statutory construction. Punctuation is minor and not decisive or controlling as an element in the interpretation of a statute. 73 Am. Jur.2d § 216, P. 410. As to the use of the word "or" in the subsection, the language from Wilcox v. Warren Construction Co., 95 Or. 125, 186 P. 13, 18-19, is instructive:

> "It is common learning as a matter of grammar that when in an enumeration of persons or things the conjunction is placed immediately before the last of the series the same connective is understood between the previous members. If the disjunctive conjunction 'or' is used, the various members of the sentence are taken separately, while if 'and' is used they are to be considered jointly. For instance, deeds are to be acknowledged 'before any judge of the Supreme Court, County Judge, Justice of the Peace, or Notary Public'. L.O.L. § 7109. It is manifest that the officers named are to be taken separately, and that the acknowledgment is not to be taken before all of them. The service

> of one is sufficient. Other illustrations will readily occur to the mind.
>
> 'Or' is defined as a 'disjunctive often with either or whether as a correlative, used to introduce a word or phrase expressing an object or action, the acceptance of which excludes all the other objects or actions mentioned'. Standard Dictionary, 1733."

Lest one believes the 1733 Standard Dictionary is out of date, Black's Law Dictionary, 4th Ed. (1951), P. 1246, cited in Caberera, gives the same definition by stating "or"

> "is a disjunctive particle used to express an alternative or to give a choice of one among two or more things."

Finally, 73 Am. Jur. 2d, § 214, pp. 419-420 states:

> "In its elementary sense the word 'or' as used in a statute, is a disjunctive particle indicating that the various members of the sentence are to be taken separately. If 'and' is used, such portions of the sentence are to be considered jointly. When, in the enumeration of persons or things in a statute, the conjunction is placed immediately before the last of the series, the same connective is understood between the previous members."

Under PCA's interpretation of the statute, a debtor would have to elect between his implements, his professional books, or his tools, so that in the case of a farmer, he would have to elect between his seed catalogue, his plow or his hoe, but he could not select all three. The present case shows the absurdity of such position. If Mutchler had to elect between subsection (a) and (c), he would not be able to carry on his trade as a potato farmer, for he would,

of necessity, be stripped of at least one vital and necessary piece of equipment or tool which is required to plant (tractor and disk), seed (drill), grow, harvest (picker and loader), and then sell the crop. PCA would have the Debtor select the disk and tractor to furrow the ground for seed, but then would take from him as non-exempt property the implements necessary to harvest and pack the crop. I find such construction would be a disservice to a liberal interpretation of exemption statutes. Regardless of the intent of the subcommittee, the final legislative action allowed exemption of $3,000.00 in implements, $3,000.00 in professional books or $3,000.00 in tools, all of which must be associated with the trade of the debtor. Section 1-2-101, M.C.A. states in defining the role of the judge:

> "In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all."

True, the intention of the legislature is to be pursued if possible, § 1-2-102, M.C.A., but that intention, when expressed in clear legislative language, will be determined from the words of the statute, not subcommittee minutes. Accordingly, the Debtors are entitled to select for their trade as farmers $3,000.00 in each

category of tools, books or implements.[1]

In this case, the Debtor Earl Mutchler selected as exempt a spudnick and tractor valued at $2,900.00 under 609(3)(c), and a disk and cultipacker valued at $3,000.00 under 609(3)(a). Bonnie Mutchler selected as exempt items under 609(3)(c) a drill, tractor with loader and combine valued at $3,000.00 and under 609(3)(a) a tractor valued at $3,000.00. Each exemption is within the statutory cap. Further, under the holdings of MacDonald v. Mercill, 714 P.2d 132 (Mont. 1986) and In re Taylor, ___ F.2d ___ (9th Cir. 1988) (Slip Op. Nov. 9, 1988), aff'g In re Taylor, 73 B.R. 149 (9th Cir. BAP 1987), each item is a tool or implement of the trade of a farmer. Thus, the objections of the Trustee and PCA to each exemption is without merit. The case of In re Patterson, 825 F.2d 1140 (2nd Cir. 1987), cited by the Trustee, is simply contrary to the holdings of the Montana Supreme Court and the Ninth Circuit Court of Appeals, dealing with the definition of tools of the trade, and involved an interpretation of § 522(f) of the Code, not a state law exemption statute.

As to the claim of each Debtor to exemption of motor vehicles, no objections have been raised that such items are not properly claimed under § 25-13-609(2). The ownership interest of Earl Mutchler in the 1971 International Truck can be claimed as exempt up to the value of $1,200.00.

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[1]If the legislature of Montana feels the result of Caberera and the present case results in a "windfall" to the Debtor, it can easily correct such situation by reducing the $3,000.00 limitation to a lesser dollar amount.

Finally, the Debtors also include in their claim of exemption a Winchester rifle and a Blackhawk revolver (no value stated) under Section 25-13-613(1)(b), M.C.A., entitled "Property necessary to carry out Governmental Functions". Such section, in pertinent part to this case, reads:

> "(1) In addition to the property mentioned in 25-13-611 [25-13-609(1)],[2] there shall be exempt to all judgment debtors the following property:
>
> * * *
>
> (b) all arms, uniforms, and accouterments required by law to be kept by any person and one gun to be selected by the debtor;"

Obviously, the purpose, intent and plain language of such subsection is to allow law enforcement personnel to exempt from execution necessary arms and guns required by such person to keep the peace. For example, peace officers in Montana are exempt from the concealed gun law, § 45-8-317(1), M.C.A., and must take firearm training as part of the basic course certified by the Board of Crime Control. Sections 7-32-303 and 44-4-301, et. seq., M.C.A. Section 25-13-613(1)(b) does not allow a farmer an additional exemption for guns or firearms, and thus the exemption claimed by each Debtor under such section is denied.

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[2]The complier of the Montana Code Annotated states:

> "Erroneous Reference. This reference in subsection (1) to 25-13-611 is erroneous. Section 25-13-611 was repealed by Ch. 302, L. 1987. Section 25-13-609 (1), enacted by Ch. 302, appears to most closely correspond to the property formerly mentioned in 25-13-611."

Exhibit # 2
2/1/89

IT IS ORDERED the objections of the Trustee and PCA to the claim of exemptions of the Debtors in the 1988 potato crop, boat and motorcycle for all amounts over $600.00 and the guns under Section 25-13-613(1)(b) are sustained, and all other objections to exemptions are denied.

JOHN L. PETERSON
United States Bankruptcy Judge
215 Federal Building
Butte, Montana 59701

Copy mailed to Counsel of
Record and Trustee this
12th day of January, 1989.
(See Attached List & UST Trustee)

STANDING COMMITTEE REPORT

February 1, 1989

Mr. Speaker: We, the committee on Judiciary report that House Bill 248 (first reading copy -- white) do pass .

Signed: _____

Dave Brown, Chairman

List of Testifying Opponents and What Group They Represent:

None

Testimony:

None

Questions From Committee Members: Senator Jenkins asked for information on the court case cited. Rep. Connelly said the court decided that they would not look at the child's living arrangements prior to the divorce and awarded custody to the other parent.

Senator Jenkins asked if that child had been living with the father and Rep. Connelly said she thought so.

Senator Halligan asked if de facto custody arrangements had been discussed in the House. He also asked if other factors had been discussed, such as current economic situations. Rep. Connelly said that she had talked with Rep. Spaeth who said that all arrangements i.e. education, church, would be looked at in his opinion. The Andre decision said that nothing that had gone on before could be considered.

Closing by Sponsor: Rep. Connelly closed saying she had spoken to many attorneys on the bill and they agreed that it would clarify custody and make their job easier.

HEARING ON HOUSE BILL 248

Presentation and Opening Statement by Sponsor:
Representative Mary McDonough of Billings, District 89, opened the hearing. She said the bill makes private retirement benefits exempt from bankruptcy proceedings. The bill was requested by an attorney in Havre who was head of the bankruptcy division of the State Bar Association. In the 1987 Montana Revised Bankruptcy Code, some of the federal exemptions were opted out. In December, a bankruptcy decision came down from Judge Peterson (Exhibit 1) which said that the MCA includes as exempt numerous public retirement pension and annuity funds; however, no private pensions such as Keoghs or IRAs are listed in statute. This bill would put private retirement on an equal basis with public retirement in the case of bankruptcy. She said that

some amendments might be proposed by the Havre lawyer and she wouldn't oppose them.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony:

None

Questions From Committee Members: Senator Pinsoneault asked if the feds had looked through the state's exemption law. Rep. McDonough said she thought so.

Closing by Sponsor: Rep. McDonough closed the hearing.

DISPOSITION OF HOUSE BILL 248

Discussion: Valencia distributed amendments requested by Keith Maristuen to which Rep. McDonough had referred. (Exhibit 2) She explained that #1 was to allow that the person currently receiving benefits can receive benefits in the future.

Senator Crippen questioned the language regarding interest. He commented that it didn't say anything about income coming "in" to the person. He thought it should say "interest in and right to receive benefits from".

Valencia agreed that could be done and added "the individual's benefits from" might be included.

Senator Pinsoneault suggested "the individual's vested interest in" the private or governmental pension.

Valencia suggested "the individual's benefits from".

Senator Crippen said the "right to receive" should remain in the amendment. Valencia said he (the author) of the amendments) was concerned that that would mean right to receive right now. He (the author) was concerned that there was a distinction between those benefits which a person has a current right to receive and those which he will receive in the future, she said.

Valencia said the second amendment amends the amount that you can exclude under the exemption, and the purpose of the amendment would be to prevent an individual from overfunding his account right before he files a bankruptcy petition. It would limit the amount he can exempt. Senator Crippen said that would apply to "prior to a year."

Amendments and Votes: Senator Jenkins MOVED the Crippen suggestion -- that the following language be substituted for the #1 amendment: "interest in or rights to receive benefits from". The MOTION CARRIED UNANIMOUSLY.

Senator Crippen MOVED that Amendment #2 be adopted. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Beck MOVED that House Bill 248 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 71

Presentation and Opening Statement by Sponsor:
Representative Tim Whalen of Billings, District 93, opened the hearing. He said the bill was a housekeeping bill to delete some of the language in Section 13-35-211 as a result of a federal court decision in which the news media challenged the statute that prohibits news media from soliciting people within 200 feet of a voting place regarding how they voted. As a result of that ruling, the election commissioner, Delores Colburg, asked him to carry the bill, he stated.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony:

None

Questions From Committee Members: Senator Beck asked what would happen if the bill didn't pass. Rep. Whalen said

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-8-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK		-	✓
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL			

Each day attach to minutes.

3-

SENATE STANDING COMMITTEE REPORT

March 8, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 248 (third reading copy -- blue), respectfully report that HB 248 be amended and as so amended be concurred in:

Sponsor: McDonough (Hazuric)

1. Page 2, line 4.
Following: "<u>from</u>"
Insert: "or interest in"

2. Page 2, line 8.
Following: "<u>service</u>"
Insert: ", excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy, which portion exceeds 15% of the individual's gross income for that 1-year period"

AND AS AMENDED BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

3/8/89
1:49 p.m.

SCR1SC.SRS

SENATE JUDICIARY
EXHIBIT NO 2
DATE 3/8/89
BILL NO HB 248

Amendments to House Bill No. ~~248~~
Third Reading Copy (BLUE)

Requested by Keith Maristuen, Attorney
For the Committee on Judiciary

Prepared by Valencia Lane
March 7, 1989

1. Page 2, line 4.
Following: "individual's"
Strike: "right to receive benefits from"
Insert: "interest in"

2. Page 2, line 8.
Following: "service"
Insert: ", excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy, which portion exceeds 15% of the individual's gross income for that 1-year period"